

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

DENNIS WISNIEWSKI,

Plaintiff,
v. _____
Civil Action No. _____

VERIZON WIRELESS LLC,

Defendant.

COMPLAINT AND DEMAND FOR JURY TRIAL

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by an individual consumer for Defendant's violations of the Telephone Consumer Protection Act of 1991 (hereinafter referred to as the "TCPA").

II. JURISDICTION AND VENUE

2. Jurisdiction of this court arises under 28 U.S.C. § 1331.
3. Venue is proper in this district under 28 U.S.C. §1331(b) in that the Defendant transacts business here and the conduct complained of occurred here.

III. PARTIES

4. Plaintiff, Dennis Wisniewski, is a natural person residing in the County of Erie and State of New York and is a "consumer" as that term is defined by 15 U.S.C. §1692a(3).
5. Defendant, Verizon Wireless LLC, is a foreign business corporation organized under the laws of Delaware doing business in the State of New York.
6. That at all times relevant herein, Plaintiff was and is a "person" as defined by 47 U.S.C. §153(32).
7. That Defendant, at all times relevant herein, owned, operated and/or controlled "customer premises equipment" as defined by 47 U.S.C. §153(14), that originated, routed, and/or terminated telecommunications.

8. That at all times relevant herein, Defendant has used the United States mail service, telephone, telegram and other instrumentalities of interstate and intrastate commerce to attempt to collect consumer debt allegedly owed to another.
9. That Defendant, at all times relevant herein, engaged in “interstate communications” as that term is defined by 47 U.S.C. §153(22).
10. That Defendant, at all times relevant herein, engaged in “telecommunications” as defined by 47 U.S.C. §153(43).
11. That Defendant, at all times relevant herein, used, controlled and/or operated “wire communications” as defined by TCPA, 47 U.S.C. §153(52), that existed as instrumentalities of interstate and intrastate commerce.
12. That Defendant, at all relevant times herein, used, controlled and/or operated “automatic telephone dialing systems” as defined by TCPA, 47 U.S.C. §227(a)(1) and 47 C.F.R. 64.1200(f)(1).
13. The acts of the Defendant alleged hereinafter were performed by its employees acting within the scope of their actual or apparent authority.
14. Defendant regularly attempts to collect debts alleged to be due another.
15. All references to “Defendant” herein shall mean the Defendant or an employee of said Defendant.

IV. FACTUAL ALLEGATIONS

16. That Plaintiff’s son, Louis Wisniewski, allegedly has an account with Verizon Wireless.
17. That in or about December 2012 Defendant began calling Plaintiff’s cellular telephone regarding Plaintiff’s son’s account. From that time through March 2013, Defendant called Plaintiff’s cellular telephone an excessive number of times. These calls were made multiple times per week, and often multiple times per day.
18. Upon information and belief, Plaintiff never gave consent to Defendant to call his cellular telephone.
19. Many if not all of the above-mentioned telephone calls were made using an automatic dialing machine wherein Defendant left artificial and/or prerecorded voiced messages.

20. That Plaintiff answered many of the calls made to him by the Defendant. On each such occasion, Plaintiff would answer his phone and an automated prompt would state press 1 if you are Louis Wisniewski otherwise press 2. Plaintiff would always press 2. Despite following the above prompt, nobody would answer and the call would then disconnect.
21. That as a result of Defendant's acts Plaintiff became nervous, upset, anxious, and suffered from emotional distress.

VI. COUNT ONE

(Telephone Consumer Protection Act of 1991
and 47 C.F.R.64.1200, et seq.)

22. Plaintiff repeats, realleges and incorporates by reference the preceding and succeeding paragraphs in this complaint as if each of them was reprinted herein below.
23. The Defendant at all times material and relevant hereto, unfairly, unlawfully, intentionally, deceptively and/or fraudulently violated the TCPA, 47 U.S.C. §227, et seq. and 47 C.F.R.14.1200, et seq. and TCPA, 47 U.S.C. §227(b)(1)(A)(iii) by initiating telephone calls to Plaintiff's telephone using an automatic telephone dialing system and/or used an artificial and/or prerecorded voice to deliver messages without having consent of Plaintiff to make such calls and leave such messages.
24. The acts and/or omissions of Defendant at all times material and relevant hereto, as described in this complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently with the express and sole purpose of unfairly, unlawfully, intentionally, deceptively and fraudulently coercing Plaintiff to pay the alleged debt and to harass him.
25. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were done unfairly, unlawfully, intentionally, deceptively and fraudulently and absent bona fide error, lawful right, legal defense, legal justification or legal excuse.
26. The acts and/or omissions of the Defendant at all times material and relevant hereto, as described in this complaint, were not acted or omitted pursuant to 47 C.F.R. §64.1200(f)(2).
27. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages as a result of their innumerable telephone calls that harassed, annoyed and abused Plaintiff, and disturbed his peace and tranquility at home and elsewhere.
28. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, caused the Plaintiff to sustain damages and experience severe emotional distress.

29. As a causally-direct and legally proximate result of the above violations of the TCPA, the Defendant at all times material and relevant hereto, as described in this complaint, is liable to actual damages, statutory damages, treble damages, and costs and attorneys fees.
30. Plaintiff received multiple calls from Defendant using an automatic telephone dialing system and/or an artificial and/or prerecorded voice entitling Plaintiff to Five Hundred Dollars and No Cents (\$500.00) for each artificial and/or prerecorded telephone call pursuant to the TCPA, 47 U.S.C. §227(d)(3)(B).
31. The Defendant caused said telephone calls of an artificial and/or prerecorded nature to be placed willfully and/or knowingly entitling Plaintiff to a maximum of treble damages pursuant to the TCPA, 47 U.S.C. §227(d)(3).

WHEREFORE, Plaintiff respectfully requests that judgment be entered against the Defendants for:

- (a) Actual damages;
- (b) Statutory damages pursuant to 47 U.S.C. §223(b)(3)(B).
- (c) Treble statutory damages pursuant to 47 U.S.C. §227b(3).
- (d) Costs and disbursements.
- (e) For such other and further relief as may be just and proper.

VII. JURY DEMAND

Please take notice that Plaintiff demands trial by jury in this action.

Dated: July 26, 2013

/s/ Seth J. Andrews
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